

UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

JENISE MARTIN,

Plaintiff

Civil No. 96-328-P-C

v.

TENNFORD WEAVING CO., INC.,

Defendant

GENE CARTER, District Judge

MEMORANDUM OF DECISION GRANTING
DEFENDANTS SMITH AND ESTES'S MOTIONS TO DISMISS

Before the Court for decision are the motions of the individual Defendants, Smith and Estes, to dismiss the Complaint herein as against each of them. (Docket Nos. 2 and 7). The basis for the requested dismissal of Count I of the Complaint, the only count brought under federal law, is that under the established law of this district, Title VII does not provide for individual liability of employees who act as supervisors in respect to claims made thereunder and that Count I fails, therefore, to state a claim against them.

Such is the law in this district. *Caldwell v. Federal Exp. Corp.*, 908 F. Supp. 29, 36 (D. Me. 1995); *Quiron v. L.N. Violette Co., Inc.*, 897 F. Supp. 18, 19-21 (D. Me. 1995); *Singer v. State of Maine*, 865 F. Supp. 19, 23-26 (D. Me. 1994), rev'd in part, 49 F.3d 837 (1st Cir. 1995). It is alleged in the Complaint that both Smith and Estes acted as supervisors of the Plaintiff and no dispute as to that fact appears in the record made on the motion.

It appears that all of the Courts of Appeals that have decided this precise issue have adopted the position exemplified by the holding of this Court's cases. *Gary v. Long*, 59 F.3d 1391, 1399 (D.C. Cir.), cert. denied, 116 S. Ct 569 (1995); *Tomka v. Seiler Corp.*, 66 F.3d 1295, 1313 (2d Cir. 1995); *Sheridan v. E.I. DuPont de Nemours and Co.*, 74 F.3d 1439, 1996 WL 36283 (3d Cir. 1996), vacated, 74 F.3d 1439 (3d Cir. 1996); *Grant v. Lone Star Co.*, 21 F.3d 649, 653 (5th Cir.), cert. denied, 115 S. Ct 574 (1994); *U.S. E.E.O.C. v. AIC Sec. Investigations, Ltd.*, 55 F.3d 1276, 1279 (7th Cir. 1995); *Miller v. Maxwell's Int'l Inc.*, 991 F.2d 583, 587 (9th Cir. 1993), cert. denied, 510 U.S. 1109 (1994); *Sauers v. Salt Lake County*, 1 F.3d 1122 (10th Cir. 1993); *Busby v. City of Orlando*, 931 F.2d 764, 772 (11th Cir. 1991). The Court of Appeals for the First Circuit has never decided the

issue. District courts in this Circuit have been split over the issue. Compare *Iacampo v. Hasbro, Inc.*, 929 F. Supp. 562, 571-72 (D.R.I. 1996) (supervisory employees may be held individually liable under Title VII) and *Ruffino v. State Street Bank and Trust Co.*, 908 F. Supp. 1019, 1047-48 (D. Mass. 1995) (individual agents of employer may be personally liable for Title VII violation) with *Hernandez v. Wangen*, 938 F. Supp. 1052, 1065 (D.P.R. 1996) (supervisor was not individually liable for Title VII violations).

The Courts of Appeals for the Fourth, Sixth and Eighth Circuits have encountered, but not definitively resolved, the question. *Birkbeck v. Marvel Lighting Co.*, 30 F.3d 507, 510-11 (4th Cir.), cert. denied, 115 S. Ct 666 (1994) (rejecting individual liability under ADEA); compare *Jones v. Continental Corp.*, 789 F.2d 1225, 1231 (6th Cir. 1986) (suggesting that plaintiff may recover against individual employees who were agents of employer under Title VII) with *Wilson v. Nutt*, 69 F.3d 538, 1995 WL 638298, 2 (6th Cir. 1995) (reserving question of whether an agent may be held liable in his individual capacity under Title VII); *Lenhardt v. Basic Inst. of Technology, Inc.*, 55 F.3d 377, 380 (8th Cir. 1995) (reserving question of individual liability under Title VII when employee is plaintiff's supervisor).

Despite the fact that the *Ruffino* and *Iacampo* decisions in this Circuit reach a contrary conclusion, this Court adheres herein to its position as articulated in the *Caldwell* case. The holding in *Caldwell* is supported by the better reasoning of the cases in which the issue has been considered and is, in fact, the present majority rule. Accordingly, the within motions are hereby GRANTED, and it is hereby ORDERED that Count I of the Complaint herein be, and it is hereby, DISMISSED as against Defendants Robert Estes and Stanley Smith. The motion is, in all other respects, DENIED.

GENE CARTER
District Judge

Dated at Portland, Maine this 28th day of January, 1997.